

RESOLUTION NO. 2016-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, DECLARING THAT THE CITY COUNCIL DEEMS THE GRANTING OF A CERTAIN FRANCHISE BENEFICIAL FOR THE CITY OF SEDONA; ORDERING AN ELECTION TO BE HELD ON AUGUST 30, 2016 FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF SEDONA THE QUESTION AS TO WHETHER OR NOT A FRANCHISE SHALL BE GRANTED TO UNS GAS, INC.

WHEREAS, UNS Gas, Inc. is desirous of obtaining a franchise with the City of Sedona in the form attached hereto as Exhibit A; and

WHEREAS, the City of Sedona has determined that the granting of the proposed franchise for UNS Gas, Inc. is beneficial to the City;

WHEREAS, the City of Sedona, at the request of UNS Gas, Inc., desires to conduct an election for the purpose of submitting to the qualified electors of the City of Sedona the question of whether the proposed franchise shall be granted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA:

SECTION 1. That the City Council of the City of Sedona determines that the granting of the franchise proposed by UNS Gas, Inc. in the form attached hereto as Exhibit A is beneficial to the City of Sedona and the City residents.

SECTION 2. That an election is hereby called and ordered to be held in the City of Sedona on August 30, 2016 for the purpose of submitting to the qualified electors of the City of Sedona the question as to whether the franchise under the terms and conditions of the above-referenced agreement shall be granted to UNS Gas, Inc.

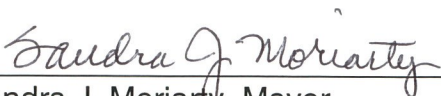
SECTION 3. That this franchise election be held pursuant to the provisions of the Arizona Constitution and laws of the State of Arizona and City Code of the City of Sedona.

SECTION 4. That the ballots used at said election shall be substantially in the following form:

SHALL THE PROPOSED FRANCHISE FOR A PERIOD OF UP TO TWENTY-FIVE (25) YEARS BE GRANTED TO UNS GAS, INC. FOR THE USE OF CITY RIGHTS-OF-WAY FOR NATURAL GAS UTILITY PURPOSES?

SECTION 5. That the City Clerk and City Manager are hereby authorized and directed to publish the proposed franchise and take such other actions required by law to conduct the election.

APPROVED AND ADOPTED by the Mayor and City Council of the City of Sedona, Arizona this 26th day of April, 2016.


Sandra J. Moriarty, Mayor

ATTEST:


Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:


Robert L. Pickels, Jr. City Attorney

EXHIBIT A

FRANCHISE AGREEMENT BETWEEN UNS GAS AND CITY OF SEDONA, ARIZONA

SECTION 1. That the City of Sedona, an Arizona municipal corporation in Yavapai and Coconino Counties, Arizona, herein called the "Municipality", hereby grants to and vests in UNS Gas, Inc., an Arizona corporation, duly authorized to transact within this State a public service business as a gas utility, herein called the "Company", a franchise with the right to operate a natural gas system, pipelines and works in the Municipality, as now or hereafter constituted, and the authority, license, power and privilege to maintain, construct, build, equip, conduct or otherwise establish and operate in said Municipality, works or systems to manufacture, use, sell, store, distribute, convey or otherwise establish and operate in said Municipality, works or systems to manufacture, use, sell, store, distribute, convey or otherwise establish, conduct, serve, supply or furnish the inhabitants of said Municipality and others, and to the Municipality whenever it may desire to contract therefore, gas for light, fuel, power, and heat, and any and all other useful purposes, and the company hereby is granted passage, right-of-way and the right to occupy and use in any lawful way during the life of this franchise every and any and all Municipality owned or controlled streets, avenues, alleys, highways, sidewalks, bridges and other Municipality owned or controlled structures of said City, both above and beneath the surface of the same, as said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures which now exist or may be hereafter extended, for every and any such service, use, effect and lawful purpose as herein mentioned.

SECTION 2. The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this franchise, provided the same do not unreasonably conflict with water or other pipes, sewers or other pre-existing underground installations, and that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges or structures of said Municipality by the Company shall be done with the utmost diligence and the least inconvenience to the public or individuals, and the Company, shall, within a reasonable time, restore such streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and structures excavated by it to their original condition as nearly as practicable, subject to the reasonable approval of the Municipality. The Company shall remove or relocate its lines and facilities as and when required by the Municipality; such removal or relocation shall be made at the sole expense of the Municipality. The company shall save the Municipality, its officers and agents, harmless from any and all liabilities proximately caused by the Company's negligence in the erection, construction, installation or operation hereunder of the Company's facilities.

SECTION 3. The Company hereby agrees to indemnify and hold harmless the Municipality, its officers, boards, commissions, employees, agents and independent contractors, against and from any and all claims, demands, causes of action, suits or proceedings regardless of the merits of the same, damages including damages to city property, liability, costs and expenses of every type, all or any part thereof which arises by reason of any injury to any person or persons including death or property damage,

resulting from the negligence of the Company, its officers, agents, employees, servants and/or independent contractors, while exercising any of the rights, privileges, powers granted herein except where the Municipality's negligence has in some manner contributed. The Municipality shall promptly notify the Company of any claim or cause of action which may be asserted against the Municipality relating to or covering any matter against which the Company has agreed, as set forth above, to indemnify, defend and save harmless Municipality. The Company reserves the right, but not the obligation, to employ such attorneys, expert witnesses and consultants as it deems necessary to defend against the claim or cause of action. The Company further reserves the right to take total or partial control of such defense. In the event that the Municipality is in control, either totally or partially of such defense, the Company shall pay all expenses incurred by the Municipality in providing the defense.

SECTION 4. The rates and charges to be charged by the Company for furnishing gas service hereunder and the rules and regulations to be made and enforced by the Company for the conduct of its business shall be those from time to time on file and effective with the Arizona Corporation Commission applicable to such service.

SECTION 5. The Company shall have the right and privilege of assigning this franchise and all rights and privileges granted herein and whenever the word "Company" appears herein, it shall be construed as applying to its successors, lessees and assigns.

SECTION 6. The Company, its successors, lessees and assigns, for and in consideration of the granting of this franchise and as rental for the occupation and use or easement over, upon and beneath the Municipality owned or controlled streets, avenues,

easements, rights-of-way, highways, alleys, sidewalks, bridges and structures in said Municipality shall pay to the Municipality, commencing with the first full billing period after the effective date of this franchise and continuing during all the time this provision shall remain in force and effect, a total aggregate sum of two percent (2%) of the gross receipts of the Company, its successors, lessees and assigns for propane or natural gas sold within the corporate limits of the Municipality, subject to the limitations hereinafter stated; such gross receipts to consist of the total amount collected from users and consumers on account of natural gas sold and consumed within the corporate limits of the Municipality under the Company's rates in existence at the time, excepting therefrom, however, the gross receipts for propane or natural gas sold to the Municipality for its own use. The Company shall make such payments semiannually on or before the last day of January and July in each such year while this provision shall remain in full force and effect or, at its option, quarterly. For the purpose of determining such revenue, the books of the Company shall at all times be subject to inspection by duly authorized municipal officials. Said payments shall be in lieu of any and all other franchise, license, privilege, instrument, occupation, excise or revenue taxes and all other exactions or charges, (except general ad valorem property taxes, special assessments for local improvements; and except municipal privilege, sales or use taxes in an amount from time to time authorized by law and collected by the Company from users and consumers of gas within the corporate limits of the Municipality) upon the business, revenue, property, gas lines, installations, gas systems, conduits, storage tanks, pipes, fixtures or other appurtenances of the Company and all other property or equipment of the Company, or any part thereof,

in said Municipality during the terms of this franchise; provided that anything to the contrary herein notwithstanding said payment shall continue only so long as said Company is not prohibited from making the same by any lawful authority having jurisdiction in the premises and so long as the Municipality does not charge, levy or collect, or attempt to charge, levy or collect other franchise, license, privilege, occupation, excise or revenue taxes or other exactions or charges mentioned herein, and if any lawful authority having jurisdiction in the premises hereafter prohibits said payment, or the Municipality does levy, charge or collect or attempt to levy, charge or collect such other franchise, license, occupation, excise or revenue taxes, or other exactions or charges, the obligation to make such payments hereinabove provided for shall forthwith cease.

SECTION 7. This franchise shall be accepted by the Company in writing, and shall thereafter be a contract duly executed by and between the Municipality and the Company.

SECTION 8. If any section, paragraph, subdivision, clause, phrase or provision hereof shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole, or any part or provision other than the part so decided to be invalid or unconstitutional.

SECTION 9. This franchise shall continue in full force and effect for a period of twenty-five (25) years from the date of Municipality approval set forth below, following approval by the electors.

SECTION 10. All systems, pipelines, works, and all other physical property installed by the Company in accordance with the terms of this franchise shall be and remain the property of the Company, and upon expiration of this franchise or any extension or renewal thereof, the Company is hereby granted the right to enter upon the Municipality owned or controlled streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures and places and public grounds in said Municipality for the purpose of removing any and all such systems, pipelines, works and other property of the Company, at any time within six (6) months after termination of this franchise or any such extension or renewal thereof.

We, the undersigned, have adopted this document on the dates set forth below.

CITY OF SEDONA

Sandy Moriarty, Mayor

Date

ATTEST:

Susan Irvine, City Clerk

APPROVED AS TO FORM:

City Attorney

UNS GAS, INC.

By: _____

Name: _____

Title: _____

Date: _____